



## **DEPARTMENT OF LABOR**

### **Employee Benefits Security Administration**

#### **Agency Information Collection Activities; Request for Public Comment**

**AGENCY:** Employee Benefits Security Administration (EBSA), Department of Labor.

**ACTION:** Notice.

**SUMMARY:** The Department of Labor (the Department), in accordance with the Paperwork Reduction Act of 1995 (PRA 95) provides the general public and Federal agencies with an opportunity to comment on proposed and continuing collections of information. This helps the Department assess the impact of its information collection requirements and minimize the reporting burden on the public and helps the public understand the Department's information collection requirements and provide the requested data in the desired format. Currently, the Employee Benefits Security Administration (EBSA) is soliciting comments on Patient Protection and Affordable Care Act Patient Protection Notice. A copy of the information collection request (ICR) may be obtained by contacting the office listed in the **ADDRESSES** section of this notice.

**DATES:** Written comments must be submitted to the office shown in the **ADDRESSES** section on or before [Insert date 60 days from publication]

**ADDRESSES:** James Butikofer, Department of Labor, Employee Benefits Security Administration, 200 Constitution Avenue NW, Room N- 5718, Washington, DC 20210, or [ebsa.opr@dol.gov](mailto:ebsa.opr@dol.gov).

#### **SUPPLEMENTARY INFORMATION:**

##### **I. Current Actions**

This notice requests public comment pertaining to the Department's request for extension of OMB's approval of the Application. After considering comments received in response to this notice, the Department intends to submit an ICR to OMB for continuing approval. No change to

the existing ICR is proposed or made at this time. The Department notes that an agency may not conduct or sponsor, and a person is not required to respond to, an information collection unless it displays a valid OMB control number. A summary of the ICR and the current burden estimates follows:

*Agency:* Employee Benefits Security Administration, Department of Labor.

*Title:* Patient Protection and Affordable Care Act Patient Protection Notice.

*Type of Review:* Extension of a currently approved collection of information.

*OMB Number:* 1210-0142.

*Affected Public:* Business or other for-profit; Not-for-profit institutions.

*Respondents:* 56,543.

*Frequency of Responses:* On occasion.

*Responses:* 256,262.

*Estimated Total Burden Hours:* 7,068.

*Estimated Total Burden Cost (Operating and Maintenance):* \$3,203

*Description:*

The Patient Protection and Affordable Care Act (the Affordable Care Act) was enacted on March 23, 2010. Section 2719A of the Public Health Service Act (the PHS Act), as added by the Affordable Care Act, and the Department's 2015 final regulations (29 CFR 2590.715-2719A) provide that if a group health plan, or a health insurance issuer offering group or individual health insurance coverage, requires or provides for designation by a participant, beneficiary, or enrollee of a participating primary care provider, then the plan or issuer must permit each participant, beneficiary, or enrollee to designate any participating primary care provider who is available to accept the participant, beneficiary, or enrollee.

The statute and the 2015 final regulations impose a requirement for the designation of a pediatrician similar to the requirement for the designation of a primary care physician.

Specifically, if a plan or issuer requires or provides for the designation of a participating primary

care provider for a child by a participant, beneficiary, or enrollee, the plan or issuer must permit the designation of a physician (allopathic or osteopathic) who specializes in pediatrics as the child's primary care provider if the provider participates in the network of the plan or issuer. The statute and the 2015 final regulations also provide that a group health plan, or a health insurance issuer may not require authorization or referral by the plan, issuer, or any person (including a primary care provider) for a female participant, beneficiary, or enrollee who seeks obstetrical or gynecological care provided by an in-network health care professional who specializes in obstetrics or gynecology.

On December 27, 2020, the Consolidated Appropriations Act, 2021 (CAA), which includes the No Surprises Act, was signed into law. The No Surprises Act provides Federal protections against surprise billing and limits out-of-network cost sharing under many of the circumstances in which surprise bills arise most frequently. The CAA added provisions applicable to group health plans and health insurance issuers in the group and individual markets in a new Part D of title XXVII of the Public Health Service Act (PHS Act) and also added new provisions to part 7 of the Employee Retirement Income Security Act (ERISA), and Subchapter B of chapter 100 of the Internal Revenue Code (Code).

The No Surprises Act expanded the patient protections related to emergency services to provide additional protections. In addition, the No Surprises Act added reorganized part 7 of ERISA and added a section 722 that includes provisions which mirror those related to choice of healthcare professional that are currently applicable under section 2719A of the PHS Act (which is incorporated by reference through ERISA section 715). The patient protections under the No Surprises Act apply generally to all group health plans and health insurance coverage and a result of the recodification of this provision is that it now applies to grandfathered health plans. The 2021 interim final regulations “Requirements Related to Surprise Billing; Part I” add a sunset clause to the current patient protection provisions codified in the 2015 final regulations, and recodify the provisions related to choice of health care professional in a new section. Accordingly,

the 2015 final regulations and 2021 interim final regulations requires plans and issuers to provide a notice to participants (in the individual market, primary subscribers) of these rights when applicable. The notice must be provided whenever the plan or issuer provides a participant with a summary plan description or other similar description of benefits under the plan or health insurance coverage, or in the individual market, provides a primary subscriber with a policy, certificate, or contract of health insurance.

On September 10, 2021, the Office of Management and Budget (OMB) approved the information collection request (OMB Control Number 1210-0142) under the emergency procedures for review and clearance in accordance with the Paperwork Reduction Act of 1995 (Pub. L. 104-13, 44 U.S.C. chapter 35) and 5 CFR 1320.13. The approval is scheduled to expire on March 31, 2022.

## **II. Focus of Comments**

The Department is particularly interested in comments that:

- Evaluate whether the collections of information are necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the collections of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., by permitting electronic submissions of responses.
- Evaluate the effectiveness of the additional demographic questions.

Comments submitted in response to this notice will be summarized and/or included in the ICR for OMB approval of the information collection; they will also become a matter of public record.

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Signed at Washington, DC, this 11<sup>th</sup> day of November, 2021.

**Ali Khawar,**

*Acting Assistant Secretary,*

*Employee Benefits Security Administration,*

*U.S. Department of Labor.*

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